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| 09/863,801 | 05/22/2001 | Tom Van Horn | 22930-06067 | 8921 |

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FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

GORT, ELAINE L

ART UNIT PAPER NUMBER

3627

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,801

Applicant(s)

VAN HORN ET AL.

Examiner

Elaine Gort

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ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-36 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 36 is rejected because it lacks patentable utility. Claim 36 claims the manipulation of data but performs no concrete, useful or tangible result.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, 12, and 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US Patent 6,418,415) in view of Restatement of the Law, Second; Contracts 2d.

Walker et al. discloses the claimed method but is silent regarding the presence of the management system (on-line retailer) communicating a quantity and time reservation to a supplier and receiving the supplier's consent to reserve the quantity for the time period. Restatement of the Law, Second; Contracts 2d discloses that it is notoriously old and well known in the art of contracts to use an "option contract" which

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incorporates a communication to a supplier of an offer including a quantity and a time reservation (see, for example, Illustration 1. on page 73) and when this offer is accepted by the seller, and the buyer gives some form of consideration, the offer becomes a binding contract that reserves the quantity for the time period for the buyer, this allows the buyer assurance that they can obtain the product if needed along with the option to not purchase depending on the buyer's future needs. For example if demand for the product increases (such as shown by increase in stock price) the buyer would be motivated to take the option to purchase the product in order to obtain a profit, but if the price dropped (or not enough demand) then the buyer could opt not to buy the product.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for sourcing a featured item for an on-line group-buying sale of Walker et al. with an option contract offer and acceptance as taught by Restatement of the Law, Second; Contracts 2d, in order for the management system (on-line retailer) to obtain option contracts with suppliers which would allow the management system to offer the products and/or services which they have option contracts on as available for sale instead of "if available" and knowing that if buyers highly demand the items the management system can take the option to purchase the product in order to make a profit from the sales to those buyers, but if demand is low then the management system is not obligated to purchase the products and/or services from the supplier.

Walker et al. discloses a method for sourcing a featured item for an on-line group-buying sale comprising: communication with a supplier including a featured item

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quantity and a featured item time reservation and obtaining suppliers consent to a quantity for a time period (for example airlines provide information of which tickets are available for what prices and which dates when an airline supplies a CPO rule set defining which offers by buyers will be accepted); conducting an on-line group-buying sale for the featured item quantity and the negotiated featured item time reservation (for example the management system offers to sell these tickets via an on-line group-buying sale during the time they are available); and sending shipment instructions to the supplier regarding featured items sold in the on-line group-buying sale (for example the airline would receive an individual's address to mail the ticket to them or to notify the buyer of changes).

5. Claims 1-9, 12, and 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's "Field of Invention" in the Specification in view of Restatement of the Law, Second; Contracts 2d.

Applicant's "Field of Invention" in the Specification discloses the claimed method of sourcing/doing business device except for the presence of an option contract between the on-line seller and the on-line seller's supplier. Restatement of the Law, Second; Contracts 2d discloses that it is notoriously old and well known in the art of contracts to provide an option contract between two parties to allow the buyer the assurance of obtaining a product or service for a specified price if the buyer desires to obtain the products or services for that price. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of

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Applicant's "Field of Invention" in the Specification with the seller's purchasing option contract as taught by Restatement of the Law, Second; Contracts 2d, in order to allow the seller's the assurance of obtaining a product or service for a specified price if the seller desires to obtain the products or services for that agreed upon price.

Response to Arguments

6. Applicant's arguments filed 2/10/04 have been fully considered but they are not persuasive.

Applicant has argued that there is no motivation to combine the Restatement with Walker to achieve the patented invention. Examiner contends that there is motivation to combine the Restatement with Walker to achieve the patented invention. The motivation to combine Restatement with Walker is that the management system (on-line retailer of Walker) could then offer products and/or services which they have option contracts as available for sale instead of "if available" and knowing that if buyers highly demand the items the management system can take the option to purchase the products and/or services in order to make a profit from the sales to those buyers, but if demand is low then the management system is not obligated to purchase the products and/or services from the supplier. This system is beneficial as the on-line management system can then generate sales without having to determine if availability exists. For the airline ticket example, the management system would have an option contract established with an airline to provide a quantity of seats which the management system could purchase during a specific time period for a specific price. This benefits the

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management system in that the management system can then accept the buyers offers to purchase the tickets without having to determine if inventory is available on a flight as they already have access to the seats. This also provides the management system with the opportunity to take advantage of increases in market demand which may drive the prices up at which time the management system would obtain profits from the increased sales price in comparison to the contracted price with the airline.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391.

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The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

EG



March 12, 2004

 3/15/04
ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600